



**United States
Fish & Wildlife Service**

Memorandum

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Date

01/19/2005

From

AD - Budg, Planning & Hum Res

Subject

**Administrative Claims for Annual Leave as a Result of the
Decision in *Butterbaugh v. Department of Justice***

This memorandum provides information that is potentially of interest to employees who used military leave prior to December 21, 2000. In 2003, the U.S. Court of Appeals for the Federal Circuit ruled that employees were required to take military leave only on days on which they were required to work and that agencies should have allowed 15 workdays of military leave for reserve training (instead of 15 calendar days, as the language was applied prior to the court's ruling). According to the court ruling, agencies should not have charged military leave for nonworkdays that occurred within the period of military duty prior to the change in military law that became effective on December 21, 2000. On this date, 5 U.S.C. 6323(a) was amended to allow employees to take military leave on an hourly basis. Following enactment of this amendment, employees were no longer required to take military leave for nonworkdays.

If you used military leave prior to December 21, 2000, you are entitled to file a leave claim against the government. Under current law, a claim must be received by the adjudicating authority within 6 years after the claim accrues. Therefore, claims filed after July 24, 2003 (the date the *Butterbaugh* decision was issued), may be accepted for crediting additional leave for military leave charged on nonworkdays between the date 6 years prior to the claim filing date (the beginning of the 6 year-claims period) and December 21, 2000 (the date of the change in the military leave law). For example, if you file a claim on January 15, 2005, any period of military service between January 15, 1999, and December 21, 2000, will be considered in crediting annual leave.

As in all claims, the burden of proof is on the employee. Along with your claim, you must provide a copy of your military orders for the time of the claim, certification of attendance, or other documentation indicating that you engaged in one or more periods of active military duty that included nonworkdays during the applicable claims period. If your claim is favorably adjudicated, you will be credited for 1 day of annual leave for each nonworkday occurring within a period of active duty for which you were charged military leave. A maximum of 4 days of annual leave may be credited for each fiscal year.

Any leave that is credited as a result of your claim will be placed in a restored leave account, and you must use the restored leave by the end of the leave year in progress 2 years after the date of

restoration. For example, if leave is restored to your account anytime during the 2005 leave year which ends on January 7, 2006, you will have to use the leave no later than the end of leave year 2008. If you do not use restored leave within the prescribed time frame, the leave is forfeited and is not eligible to be restored again under any circumstances.

You must send your claim to your servicing human resources officer who is the adjudicating authority. It is recommended that you send your claim in a manner that you will receive a receipt for it so that you have proof that your claim was timely filed. All correspondence concerning your claim must contain your name and social security number and the number of hours you believe should be restored.

Please contact your servicing human resources office you have any questions.

Our mission is, working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.